Rem'd C. J.

1553

SUPREME COURT OF THE UNITED STATES.

No. ~~189~~. 40. 53. 32. 89
" 28. 27.

EDWARD McGEHEE, PLAINTIFF IN ERROR,

vs.

MARTIN R. P. MATHIS, SHERIFF, &c.

IN ERROR TO SUPREME COURT OF STATE OF ARKANSAS.

GEO. S. GIDEON, printer, 511 Ninth street, Washington, D. C.

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STATE OF ARKANSAS,
In the Supreme Court.

Be it remembered, that at a supreme court of the State of Arkansas, begun and held at the court-house, in the city of Little Rock, on the 2d day, being the first Monday in January, A. D. 1860, before the Hon. Elbert H. English, chief justice, and the Hon. Freeman W. Compton, judge, were the following proceedings, on the 28th day of January, to wit:

Trans. of Ct. Ct.

EDMUND MCGEHEE, Appellant,
vs.
MARTIN R. P. MATHIS, as Sheriff, &c., Appellee.
} No. 264.—Appeal from Chicot Circuit Court, in Chancery.

Be it remembered, that heretofore, to wit, on the 22d day of December, A. D. 1858, the said appellant filed in this court the transcript of the record of said circuit court in this cause, which is in the following words:

Pleas before the Honorable John C. Murray, judge of the 2d judicial circuit of the State of Arkansas, in chancery sitting, at a court begun and held at the court house, in the town of Lake Village, in Chicot county, and State of Arkansas, on the 1st Monday after the fourth Monday of September, A. D. 1858; and on the 4th day of said term, and on the 7th day of October, A. D. 1858, among others, the following proceedings were had, to wit:

Bill of Complaint.

EDMUND MCGEHEE, Complainant,
vs.
MARTIN R. P. MATHIS, Defendant.
} Bill for Injunction.

Be it remembered, that heretofore, to wit, on the 8th day of March, A. D. 1858, the said complainant, by his solicitors, filed in the office of the clerk of said court his bill for injunction in said cause, which is in the words and figures following, to wit:

STATE OF ARKANSAS,
County of Chicot.

In the Chicot County Court, in Chancery, to the Term thereof for 1858.

To the Honorable Theodoric F. Sorrells, Judge of said Circuit Court, in Chancery sitting:

Edmund McGehee brings this his bill of complaint against Martin R. P. Mathis, as and in his capacity of sheriff and collector of the

taxes of the county of Chicot, defendant herein, and thereupon your orator complains and says: That by an act of the Congress of the United States, approved the 28th day of September, A. D. 1850, all the swamp and overflowed lands made thereby unfit for cultivation, within the State of Arkansas, and remaining unsold at the passage of the act, were granted to said State to enable her to construct the necessary levees and drains to reclaim such lands, of which lands the Secretary of the Interior was directed to make out plats and lists, and transmit them to the governor of Arkansas, and cause a patent for such lands to issue to said State, upon which a fee simple title to such lands should vest in said State, subject to the disposal of the legislature thereof; and it was provided that the proceeds of said lands, whether from sale or direct appropriation in kind, should be applied exclusively, as far as necessary, to the purpose of reclaiming said lands, by means of levees and drains, which grant and donation was accepted by said State; and on the 6th day of January, A. D. 1851, by the act of the general assembly thereof, on that day approved, it was among other things enacted, that the governor should appoint three competent persons to be a board of swamp land commissioners, who should take a certain oath therein provided, and execute a certain bond therein provided; that it should be the duty of said commissioners: 1st. To fix the price of the swamp lands so granted, in their then condition, taking into consideration their then locality, and the value that would be added to them by reclamation, list of which, with the valuation of each tract or legal subdivision, should be forwarded to the governor, subject to his approval or rejection; 2d. To determine the locality, dimensions, and extent of the necessary drains and levees, in order to reclaim said lands; 3d, and let out the making of said levees and drains; and it was by said act provided, that the payment for making such levees and drains should be made in the land reclaimed, or in the proceeds of the sale thereof, at the prices previously fixed on said lands by the commissioners. That the commissioners should have power to issue land scrip, in which any contractor at his option might demand, and receive in lieu of the land in kind payment for his work, which scrip should be transferable, and might be located on any of the unlocated swamp and overflowed lands. And by the 14th section it was enacted, "That to encourage by all just means the progress and completion of the reclaiming such lands by offering inducements to purchasers and contractors to take up said lands, all said swamp and overflowed lands should be exempt from taxation for the term of ten years, or until they should be reclaimed," which was a contract not to be violated or annulled by the State, after acted upon by third persons, without a violation of the Constitution of the United States, under which acts of the general assembly the governor appointed John W. Buckner, Cincinnatus Trousdale, and Creed Taylor to be such board of swamp land commis-

sioners, as were thereby provided for, who accepted the office, executed bond, and took the oath prescribed, and on the 6th day of March, 1851, convened at Helena, established there the office of the board, appointed secretary, divided the State into three districts, one whereof they assigned to each commissioner, appointed an engineer for said swamp land board, and established the price of said swamp lands to be, for all lands within six miles of a navigable stream at seventy-five cents per acre, and for all lands more than six miles from a navigable stream 50 cents per acre, and declared what streams were to be considered navigable streams.

And your orator would further represent, that by an act of the general assembly, approved the 12th day of January, A. D. 1853, it was further enacted by the said general assembly, that five offices for the sale and entry of lands of the State should be established at places specified therein, and provision was made for the election of a land agent at each such office; that said land agents should have power to sell said swamp and overflowed lands. And it was also further provided, that thereafter the board of commission should be elected by the general assembly; and it was made the duty of the commissioner, on the 1st Monday in January in each year, to make out and transmit to the auditor accurate lists of all swamp and overflowed lands reclaimed, in order that the same might be taxed according to the provisions of the 14th section of the above entitled act of 6th January, 1851; and it was provided by the 34th section, that the auditor should transmit to the sheriff of the proper county a copy of the list of swamp lands reclaimed in his county, as furnished by the commissioners, which lands he should assess for taxation as other cases; which provision, if intended to subject said lands or any of them to taxation, in any event, until ten years after the date of entry, impaired the obligation of the contract contained in said 14th section of the act of 6th January, A. D. 1851, and so was in violation of the Constitution of the United States, and void.

Your orator further represents, that under these acts and ordinances, the board of swamp land commissioners did enter into and make binding contracts with various individuals for building levees and drains, for the purpose of reclaiming said swamp and overflowed lands, under which contract the said contractors did proceed to build many and large levees, and did expend large amounts of money, and employing many hands in the completion thereof.

Your orator would further represent, that he did, during the years A. D. 1855, 1856, and 1857, enter large tracts of land in the districts of lands subject to sale at Helena; that said lands were all, and each and every tract so entered by him, *was* located with scrip, which had been issued upon contracts entered into with the board of swamp commissioners and with the State of Arkansas prior to the 11th day of January, A. D. 1855, and while the 14th

section of the act of 6th of January, A. D. 1851, was in full force and effect; and that under the law, he as the holder of said scrip was subrogated to all the rights of the contractor, and entitled in his lieu and place to all the benefits of said 14th section of the act of 6th of January, 1851, which he might have been entitled to.

Your orator would further represent, that among the locations so made by him as aforesaid, the following lands situate in Chicot county, Arkansas, were entered, and remain unreclaimed:

By whom purchased and No. Cert.	Part of Section.	Section.	Township.	Range.	Acres.
Edmund McGehee	N. ½	3			
	E. ½	6			
	N. E.	7			
No. Cert. 2,248	N. ½	8	19 S...	3 W...	1,120.00
Same	W. ½	9			
	S. E. ¼ S. E. ¼	9			
	W. ½ of E. ½ & N. E. ¼ of N. E. ¼.	9			
	Section	4			
2,249	"	5	19 S...	3 W...	1,840.00
Same	Section	28			
	W. ½	35			
	W. ½ W. ½	26			
2,250	Section	27	18 S...	3 W...	1,760.00
Same	Section	29			
	E. ½	30			
2,251	E. ½	19	18 S...	3 W...	1,280.00
Same	Section	20			
	Section	21			
2,252	Section	22	18 S...	3 W...	1,920.00
Same	E. ½	18			
	Section	17			
	N. E.	7			
2,253	W. ½ S. E.	7	18.....	3 W...	1,200.00
Same	Section	8			
	Section	9			
2,254	Section	10	18 S...	3 W...	1,900.00
	Section	3			
	Section	4			
	Section	5			
2,255	E. ½	6	18 S...	3 W...	2,181.24
Edmund McGehee	E. ½	31			
	Section	32			
	Section	33			
2,256	Section	34	18 S...	3 W...	2,240.00
Same	E. ½	6			
	Section	20			
	Section	17			
	E. ½	8			
2,257	Section	5	17 S...	3 W...	2,587.11
Same	S. W. N. E. ¼	14			
	Section	23			
	W. ½ & S. E. ¼	14			
2,258	Section	15	17 S...	3 W...	1,800

Statement—Continued.

By whom purchased and No. Cert.	Part of Section.	Section.	Township.	Range.	Acres.
Same	W. ½	26			
	N. ½ N. E. ¼	26			
No. Cert. 2,259	S. ½ S. E.	26	17 S...	3 W...	480
Same	Section	33			
	Section	34			
2,260	W. ½	35	17 S...	3 W...	1,600
Same	S. ½ & N. E.	12			
	N. ½ & S. W.	2			
	Section	3			
2,261	Section	4	17 S...	3 W...	2,273.05
Same	Section	9			
	Section	10			
2,262	W. ½ & S. E. ¼	11	17 S...	3 W...	1,760
Same	W. ½	19			
	Sections	6 & 7			
2,263	W. ½ & N. E. ¼	18	16 S...	2 W...	1,933.34
Same	N. E. ¼	6			
	N. ½ & S. E.	5			
2,272	E. ½ S. W.	5	12 S...	3 W...	603.52
Same	S. W. & W. ½ S. E.	15			
	W. ½ & W. ½ E. ½	22			
	N. ½ & S. E.	21			
2,273	N. W. ¼	27	12 S...	2 W...	1,360
Same	S. ½	9			
	E. ½ S. E.	8			
	W. ½ N. W.	32			
2,274	N. W. ¼ S. W. ¼	32	12 S...	3 W...	520
Same	N. ½	4			
	S. ½	5			
	S. E. ¼	6			
	E. ½ N. E. ¼	6			
	N. ½	8			
	W. ½ S. E.	8			
	S. E. S. E.	8			
2,820	E. ½ N. E.	7	19 S...	4 W...	1,400
Same	W. ½ N. W.	20			
	Fr'l section	36			
	S. ½	25			
	S. ½	26			
	S. E.	27			
	S. ½ S. W.	27			
	Section	29			
	W. ½	28			
	W. ½ S. E.	28			
	W. ½	21			
	E. ½	17			
	E. ½ S. E. ¼	20			
2,821	S. W. ¼ S. E. ¼	20	19 S...	4 W...	2,891.98
Same	W. ½	2			
	E. ½	3			
	N. W.	3			
	N. ½ S. W.	3			
	S. W. ¼	10			
	S. ½ N. W. ¼	10			
	S. ½	9			

Statement—Continued.

By whom purchased and No. Cert.	Part of Section.	Section.	Township.	Range.	Acres.
No. Cert. 2,822	N. W. ¼	15	19 S...	4 W...	1,600
Same	Section	17			
	S. ½ f	8			
	E. ½ S. E.	29			
	S. ½ N. W.	28			
	S. W f l	30			
2,823	W. ½ N. W.	30	19 S...	3 W...	1,398.39
Edmund McGehee 2,854	Section	33	16 S...	3 W...	640
Same	W ½ W. ½	22			
	Section	4			
	do	5			
	do	8			
	do	9			
	do	17			
	do	15			
	do	20			
	do	21			
	do	29			
	do	32			
	W. ½	28			
	W. ½ E. ½	28			
	W. ½	33			
	W. ½ E. ½	33			
	W. ½	10			
2,825	W. ½ S. E. ¼	10	15 S...	3 W...	7,951.50
Same 2,826	Fr'l sec	30	14 S...	3 W...	608.37
Same	S E. ¼ & S. ½ N. E ¼	25			
	N. W. ¼	25			
2,827	W. ½	24	14 S...	3 W...	720
Same	E. ½ S. W.	17			
2,828	E. ½	17	14 S...	3 W...	400
Same	Section	2			
	N. ½ S. E. ¼	11			
	N. ½ S. W.	11			
	E. ½	3			
Edmund McGehee	N. E. p't	10			
	E. ½ N. W.	10			
2,830	N. ½ of S. E. ¼	10	14 S...	2 W...	1,789.24
Same	E. ½	34			
	E. ½ S. W.	34			
	N. W. S. W.	34			
	E. ½	27			
	E. ½ S. W. ¼	27			
	W. ½	23			
	E. ½ of E. ½	22			
	N. E. ¼	15			
	E. ½ S. E. ¼	15			
	Sect's	14, 9, & 4			
	N. ½	3			
2,831	E. ½	5	12 S...	2 W...	4,248.30
Same	Sect's	31 & 32			
	S. W. ¼	33			
	W ½ N. W.	33			
	S. W. S. E.	33			

Statement—Continued.

By whom purchased and No. Cert.	Part of Section.	Section.	Township.	Range.	Acres.
	S. W. S. W.....	28			
	S. ½ and N. W.....	29			
	S. ½ N. E. ¼.....	29			
	Section.....	30			
	E. ½ and S. W....	17			
	E. ½	8			
No. Cert. 2,834	W. ½.....	2	12 S...	2 W...	3,896.08
	E. ½. E. ½.....	17			
	E. ½ N. E.....	20			
Same.....	W. ½ N. W.....	21			
	N. W. S. W.....	21			
	W. f'l ½.....	4			
	W. ½ E ½.....	4			
	E. ½ N. E. ¼.....	5			
	Sections	6 & 7			
	W. ½ S. W.....	8			
	E. ½ S. E. ¼.....	8			
	W. ½ & W. ½ E. ½	9			
2,833	S. E. N. E. ¼.....	9	13 S...	2 W...	2,912.59
Same.....	E. ½ & E. ½ W. f'a.	34			
	Section.....	35			
	S. E. ¼.....	27			
	Sections	26 & 23			
	N. ½	22			
	Section.....	14			
	E. ½ and S. W...	15			
	N. E. W. W.....	15			
2,834	E. ½	10	13 S...	2 W...	4,360
Same.....	Section.....	11			
	W. ½.....	1			
	S. ½ S E. ¼.....	1			
	Section.....	2			
2,835	E. ½	3	13 S...	2 W...	2,022.36
Same	S. ½	13			
	E. ½.....	23			
	Section.....	24			
Edmund McGehee.....	Section.....	25			
	"	26			
	"	35			
2,836	"	36	12 S...	2 W...	3,840
Same	Fr'l section.....	31			
	"	32			
2,841	W. f'l	33	19 S...	4 W...	536.24
Same	Section.....	34			
	E. ½	28			
	Section.....	22			
	do.....	27			
	do.....	14			
	do.....	15			
	W. ½ W. ½.....	13			
	N. E.....	13			
	E. ½ S. E.....	13			
	E. ½	9			
	Section.....	10			
	do.....	11			
	do.....	12			

Statement Continued.

By whom purchased and No. Cert.	Part of Section.	Section.	Township.	Range.	Acres.
	Sections	1			
	do.....	2			
	do.....	3			
No. Cert. 2,852	E. ½	4	16 S...	3 W...	8,581.01
Same	N. E.....	31			
	E. ½ S. E.....	31			
	Section.....	28			
	do	29			
Same	Section.....	32			
	do.....	33			
	E. ½	21			
	S. ½	22			
	Section.....	23			
	do.....	26			
	do.....	27			
	do.....	34			
	do.....	35			
	do.....	36			
2,853	S. W.....	25	14 S...	3 W...	7,440
On back with pencil—					
(Endorsed:) Entered at Helena, 27 March, 1856.					
Auditor's Office, Little Rock, Arkansas, 21 November, 1856.					
T. 10 S., R. 2 W., No. 2,663, contains..... 1,296.33 acres, &c.					
Do. 2,650 contains 2,160					
3,456.33					
	N. E. ¼.....	12	13 S...	3 W...	320
3,248	W. ½ of E. ½.....	13	13 S...	"	320
	W. ½.....	23			
	W. ½ of E. ½	23			
	E. ½	22			
	N. W. ¼.....	22			
	N. ½ of N. E. ¼...	27			
	N. ½ of N. W.....	26			
	S. ½ of S. W. ¼...	26			
	N. ½	35			
	W. ½ of N. W.....	36			
	S. E. ¼ of N. W. ¼	36			
	N. ½ of S. W. ¼...	36			
	N. ½ of S. E. ¼.....	36			
	E. ½ of N. E. ¼.....	36			
3,247	S. W. ¼ of N. E. ¼	36	12 S...	3 W...	1,920
	N. ½	4			
	W. ½ of N. W ¼...	3			
	S. E. ¼.....	9			
	S. ½ of S. W. ¼...	9			
	S. W. ¼.....	10			
	N. W. ¼.....	15			

Statement—Continued.

By whom purchased and No. Cert.	Part of Section.	Section.	Township.	Range.	Acres.
No. Cert. 3,302	S. ½.....	21	13 S...	3 W...	1,193.28
3,311	N. ½.....	17	13 S...	3 W...	320.00
	N. ½ of S. W. ¼...	29			
	W. ½ of S. W.....	11			
	S. E. ¼ of S. W. ¼, and S. ½ of S. E ¼	24			
	E. ½ of N. E. ¼, & N. E. ¼ of S. E. ¼	32			
	W. ½ of S. W. ¼...	33			
3,303	W. ½ of N. W. ¼, & N. W. ¼ of S. W. ¼	34	12 S...	3 W...	600.00
3,304	S. ½ of S. W. ¼, & N. W. ¼ of S. W. ¼	3	15 S...	3 W...	120.00
				Total...	90,187.55

Your orator had well hoped that after the State of Arkansas had, by solemnly promising and contracting with all who should contract to build levees for her, in order to reclaim her swamp and overflowed lands, that the lands to be entered for said work should not be taxed, but should be exempt from taxation for ten years—after thus inducing persons to take such contracts, and your orator to purchase their scrip, and locate lands, thus enabling them to fulfil their contracts and reclaim said swamp and overflowed lands, when said provision of the act of the general assembly entered into and formed part of the price of said lands, and of every contract and the consideration of every contract made for *levying*, she would have abided by that her solemn contract, and not have attempted wantonly to violate and annul it. But by an act of the general assembly, approved the 11th day of January, A. D. 1855, it has been enacted that the said 14th section of said act of 6th January, A. D. 1851, shall be and is repealed; that lands confirmed or to be confirmed to said State as swamp and overflowed lands, and sold or to be sold, shall be subject to taxation like other lands, and shall be assessed by the sheriffs of the several counties for each year next succeeding the date of sale or location, like other taxable property under existing laws, and to proceed to collect the taxes thereon, and all laws conflicting with that act are repealed.

Your orator further represents that the defendant, Martin R. P. Mathis, is now sheriff and collector of taxes for the county of Chicot, in said State, duly commissioned, and that in pursuance and obedience to said act of the general assembly of 11th January, A. D. 1855, the auditor did furnish him with a list of the lands entered and located by your orator in the county of Chicot; that

he, as such sheriff, has assessed part of them for taxation for the year 1857, and is now proceeding to collect the taxes thereon, and is proceeding to assess the entire list for taxation for 1858.

Your orator represents that said act of the general assembly impairs the obligation of a contract, to wit, the contract contained in the 14th section of said act of 6th of January, 1851, between the State and the contractor for building the levees, and to which your orator was subrogated, as the holder and locator of the scrip; that under the provisions of said act of 6th of January, A. D. 1851, all lands entered or located with scrip issued upon contracts, whether located by the contractor or his transferee, were to be exempt from taxation for ten years; that said act of 11th January, 1855, is a fraud upon the rights of your orator; that if the said sheriff is not restrained from collecting the taxes off of said lands they will be sold and purchased by different persons, when a multitude of suits will be necessary to quiet the title of your orator, or he will be compelled to pay the taxes, in violation of right, in order to avoid vexation and trouble.

Your orator further represents, that by an act of the general assembly of this State, enacted in violation of the constitution of the State, it is provided that in assessing lands for county, State, and road taxes, none shall be assessed at less than three dollars per acre, and in assessing lands for levee tax in Chicot county none shall be assessed at less than ten dollars per acre, the constitution expressly providing that all property subject to taxation shall be taxed according to its value; and said lands are accordingly taxed at ten dollars per acre for the levee tax, although sold by said State at 75 cents and 50 cents per acre, and not now worth one-half the amount assessed at.

He represents that said lands are, valuing them at ten dollars per acre, of the value of , and that the levee taxes thereon for one year will amount to $4,744 45, and for ten years to , which is the true amount in controversy in this suit.

Wherefore, inasmuch as said act of assembly repealing said 14th section of said act of 6th January, 1851, and the act of 7th of January, 1857, providing for a special levee tax, so far as it attempts to tax swamp and overflowed lands, is a gross violation of a solemn contract of the State of Arkansas, valid and constitutional when made, and directly and boldly impairs its obligation, and is therefore null and void, as contrary to an express violation of the Constitution of the United States, as it is a fraud upon private rights, as your orator is directly affected by it, and the contract made with him grossly violated by it. And inasmuch as your orator cannot have adequate remedy at law, nor avoid a multiplicity of suits, nor prevent the commission of this great fraud, and the violation of a valid contract, except in a court of equity, where matters of that nature are particularly cognizable:

To the end, therefore, that the said Martin R. P. Mathis, as and in his capacity of sheriff and collector of taxes in and for the county of Chicot, may be made a defendant to this suit, and that he may make full, true, and perfect answer to all and singular the allegations, matters, and things herein contained, as fully and particularly as though the same were here again repeated in the form of special interrogatories, and that by a decree of your honor he may be, and his successors in office be, enjoined and restrained from listing said lands for taxation or collecting taxes thereon until ten years from the date of their entry, and that said act of assembly of 11th of January, 1855, may be declared a law impairing the obligation of a contract, and therefore null and void; and that said provision of the statute providing that no lands shall be taxed for levee purposes in Chicot county, at a less value than ten dollars per acre, be declared void, as contrary to the constitution of the State; and that your orator may have such other and further relief as may be suited to the nature of his case and shall be in accordance with equity and good conscience, he prays process of subpœna, and also a writ of injunction to said Martin R. P. Mathis, as sheriff, directed, enjoining him and his successors in office from so listing for taxation, or collecting taxes from any of said lands, until further order and decree of your honor; and he will ever pray, &c.

TAPPAN & HORNER,
Sol'c'trs for Complainant.

I, John J. Hornor, acknowledge myself held and firmly bound unto Martin R. P. Mathis, as sheriff and collector of taxes of Chicot county, Arkansas, in the sum of one hundred and five dollars, conditioned that I pay all the costs in the above and foregoing cause, wherein Edmund McGehee is complainant and the said Mathis, as sheriff, &c., is defendant.

Witness my hand and seal, this 2d day of March, A. D. 1858.

JNO. J. HORNOR. [SEAL.]

STATE OF ARKANSAS,
County of Phillips.

I, Edmund McGehee, the complainant in the above and foregoing bill, being duly sworn, do state on oath that the allegations and matters of fact therein contained and set forth, so far as stated on my own knowledge, are true, and also so far as stated on the information of others, I believe to be true.

E. McGEHEE.

Sworn to and subscribed before me this 2d day of March, 1858.

EDW. H. COWLEY, *Clerk*.
By JAMES B. SHELL, *D. C.*

Injunction Bond.

Know all men by these presents, that we, Edmund McGehee, as principal, and J. C. Tappan and John C. O. Smith as his security, are held and firmly bound unto Martin R. P. Mathis, as sheriff of Chicot county, in the State of Arkansas, in the full and just sum of ten thousand dollars, for the payment of which, well and truly to be made, we hereby bind ourselves, our heirs and legal representatives, firmly by these presents.

Witness our hands and seals, this 6th day of March, A. D. 1858.

The condition of the above obligation is such, that whereas the above bounden Edmund McGehee has heretofore filed his original bill of complaint in the office of the clerk of the circuit court within and for the county of Chicot and State of Arkansas, on the chancery side of said court, wherein the said Edmund McGehee is complainant and the said Martin R. P. Mathis, as sheriff as aforesaid, is defendant, to restrain, inhibit, and enjoin the said defendant, as sheriff as aforesaid, from proceeding to collect the taxes for the year A. D. 1857, assessed upon certain lands mentioned in said bill, and situated in the county of Chicot and State of Arkansas: Now, therefore, if the said Edmund McGehee, complainant as aforesaid, will abide the decision which may be made in this cause, wherein he is complainant, and the said Martin R. P. Mathis, as sheriff as aforesaid, is defendant, and if said injunction be dissolved, either in whole or in part, that he, the said McGehee, will pay all such sums of money and costs that may be adjudged against him, then this bond to be null and void; otherwise, to remain in full force and virtue.

Witness our hands and seals, the day and year above written.

E. McGEHEE. [SEAL.]
J. C. TAPPAN. [SEAL.]
JOHN C. O. SMITH. [SEAL.]

Order for Injunction.

Having examined the foregoing bill of complaint, and being sufficiently advised as to the law:

It is ordered by the undersigned that the clerk of the circuit court of Chicot county, Arkansas, do issue a writ of injunction to and against the sheriff of Chicot county, enjoining and restraining said sheriff as prayed for in said bill of complaint.

I have examined the foregoing bond, and approve said bond, as well as the securities therein.

Given under my hand and seal, March 6, 1858.

THEODORIC F. SORRELS,
Judge of the 2d Judicial Circuit of the State of Arkansas.

Endorsed: Filed in my office this 8th day of March, A. D. 1858.

Attest: S. N. CAUGHEY, *Cl'k.*
By S. L. DORSEY, *D. C.*

Injunction.

STATE OF ARKANSAS,
County of Chicot.

The State of Arkansas to Martin R. P. Mathis, as and in his capacity of sheriff and collector of taxes in and for the county of Chicot, and his successors in office:

Know ye, that whereas Edmund McGehee has lately exhibited to Theodorick F. Sorrells, judge of the 2d judicial circuit of the State of Arkansas, his bill of complaint against the above named Martin R. P. Mathis, sheriff as aforesaid, setting forth, in substance, that he is the legal owner of the following described tracts or parcels of land, lying and being in the county and State aforesaid, as follows:

	Part Section.	Section.	Township.	Range.	Acres.
Edmund McGehee	N. ½	3			
	E. ½	6			
	N. E.	7			
	N. ½	8	19 S...	3 W...	1,120.00
Same	W. ½	9			
	S. E. ¼ S. E. ¼	9			
	W. ½ of E. ½ & N. E. ¼ of N. E. ½.	9			
	Section	4			
	"	5	19 S...	3 W...	1,840.00
Same	Section	28			
	W. ½	35			
	W. ½ W. ½	26			
	Section	27	T. 18 S.	3 W...	1,760.00
Same	Section	29			
Same	E. ½	30	18 S...	3 W...	
	E. ½	19	" ...	" ...	1,280.00
	Section	20			
	Section	21			
	Section	22	18 S...	3 W...	1,920.00
	E. ½	18			
	Section	17			
	W. E.	7			
	W. ½ S. E.	7	18 S....	3 W...	1,200.00
	Section	8			
	do.	9			
	do.	10	18 S...	3 W...	1,920.00
	Section	3			
	do.	4			
	do.	5			

Statement—Continued.

	Part Section.	Section.	Township.	Range.	Acres.
Edmund McGehee.....	E. f.....	6	18 S...	3 W...	2,181.24
	E. ½	31			
	Section.....	32			
	Section.....	33			
	Section.....	34	18 S...	3 W...	2,240.00
	E. ½.....	6			
	Section.....	20			
	Section.....	17			
	E. ½.....	8			
	Section.....	5	17 S...	3 W...	2,587.11
	S. W. N. E. ¼.....	14			
	Section.....	23			
	W. ½ & S. E. ¼...	14			
	Section.....	15	17 S...	3 W...	1,800
	W. ½.....	26			
	W. ½ N. E. ¼.....	26			
	S. ½ S. E.....	26	17 S...	3 W...	480
	Section.....	33			
	do.	34			
	W. ½.....	35	17 S...	3 W...	1,600
	S. ½ & N. E.....	12			
	W. ½ & S.W.....	2			
	Section.....	3			
	Section.....	4	17 S...	3 W...	2,273.05
	Section.....	9			
	do.	10			
	W. ½ & S. E. ¼...	11	17 S...	3 W...	1,760
	W. ½.....	19			
	Section..	6			
	Section.....	7			
	W. ½ N. E. ¼.....	18	16 S...	2 W...	1,933.34
	N. E. fr.....	6			
	W. ½ & S. E.....	5			
	E. ½ S. W.....	5	12 S...	3 W...	603.52
	S. W. & W. ½ S. E.	15			
	W. ½ & W. ½ E. ½	22			
	W. ½ S. & E.....	21			
	N. W. ¼.....	27	12 S...	2 W...	1,360
	S. ½.....	9			
	E. ½ S. E.....	8			
	W. ½ N. W.....	32			
	N. W. ¼ S. W. ¼	32	12	3 W...	520
	N. ½.....	4			
	S. ½.....	5			
	S. E. ¼.....	6			
	E. ½ N. E. ¼.....	6			
	N. ½.....	8			
	N. ½ S. E.....	8			
	S. E. S. E.....	8			
	E. ½ N. E.....	7	19 S...	4 W...	1,400
	N. ½ N. W.....	20			
	Fr'l section	36			
	S. ½.....	25			
	S. ½.....	26			
	S. E.....	27			

Statement—Continued.

	Part Section.	Section.	Township.	Range.	Acres.
Edmund McGehee.....	S. ½ S. W.....	27			
	Section	29			
	W. ½.....	28			
	W. ½ S. E.....	28			
	W. ½.....	21			
	E. ½.....	17			
	E. ½ S. E. ¼.....	20			
	S. W. ¼ S. E. ¼...	20	19 S...	4 W...	2,891.98
	W. ½.....	2			
	E. ½.....	3			
	N. W.....	3			
	N. ½ S. W.....	3			
	S. W. ¼.....	10			
	S. ½ N. W.....	10			
	S. ½.....	9			
	N. W. ¼.....	15	19 S...	4 W...	1,600
	Section.....	17			
	S. ½.....	8			
	E. ½ S. E.....	29			
	S. ½ N. W.....	28			
	S. W f'l.....	30			
	W. ½ N. W.....	30	19 S...	3 W...	1,398.39
	Section.....	33	16 S...	3 W...	640
	W. ½ W. ½.....	22			
	Section.....	4			
	do.....	5			
	do.....	8			
	do.....	9			
	do.....	17			
	do.....	15			
	do.....	20			
	do.....	21			
	do.....	29			
	Section.....	32			
	W. ½.....	28			
	W. ½ E. ½.....	28			
	W. ½	33			
	W. ½ E. ½.....	33			
	W. ½.....	10			
	W. ½ S. E. ¼	10	15 S...	3 W...	7,951.50
	Fr'l section.....	30	14 S...	3 W...	608.37
	S. E. ¼ & S. ½ N. E ¼	25			
	N. W.....	25			
	W. ½.....	24	14 S...	3 W...	720
	E. ½ S. W.....	17	" ...	" ...	"
	E. ½.....	17	" ...	" ...	400
	Section.....	2			
	N. ½ S. E. ¼.....	11			
	W. ½ S. W.....	11			
	E. ½.....	3			
	N. E. ¼.....	10			
	E. ½ N. W.....	10			
	N. ½ S. E.....	10	14 S...	2 W...	1,789.24
	E. ½.....	34			
	E. ½ S. W.....	34			

Statement—Continued.

	Part Section.	Section.	Township.	Range.	Acres.
Edmund McGehee.....	N. W. S. W.....	34			
	E. ½	27			
	E. ½ S. W. ¼.....	27			
	W. ½.....	23			
	E ½ E. ½.....	22			
	N. E. ¼.....	15			
	E. ½ S. E.....	15			
	Sect's	14, 9, & 4			
	N. ½	3			
	E. ½.....	5	12 S...	2 W...	4,248.30
	Sect's	31 & 32			
	S. W. ¼.....	33			
	W. ½ N. W.....	33			
	S. W. S. E.....	33			
	S. W. S. W.....	28			
	S. ½ and N. W.....	29			
	S. ½ N. E. ¼.....	29			
	Section.....	30			
	E. ½ and S. W....	17			
	E. ½	8			
	W. ½.....	2	12 S...	2 W...	3,896.08
	E. ½ E. ½.....	17			
	E. ½ N. E. ¼.....	20			
	W. ½ N. W.....	21			
	N. W. S. W.....	21			
	W. f'l ½.....	4			
	W. ½ E. ½.....	4			
	E. ½ N. E. ¼.....	5			
	Sections	6 & 7			
	W. ½ S. W.....	8			
	E. ½ S. E. ¼.....	8			
	W. ½ & W. ½ E. ½	9			
	S. E. ¼ N. E. ¼.....	9	13 S...	2 W...	2,912.59
	E. ½ & E. ½ W. ½...	34			
	Section.....	35			
	S. E. ¼.....	27			
	Sections	26 & 23			
	W. ½	22			
	Section.....	14			
	E. ½ and S. W...	15			
	N. E. N. W.....	15			
	E. ½	10	13 S...	2 W...	4,360
	Section.....	11			
	W. ½.....	1			
	S. ½ S E. ½.....	1			
	Section.....	2			
	E. ½	3	13 S...	2 W...	2,022.36
	S. ½	13			
	E. ½.....	23			
	Section.....	24			
	Section.....	25			
	"	26			
	"	35			
	"	36	12 S...	2 W...	3,840
	Fr'l section.....	31			

Statement—Continued.

	Part Section.	Section.	Township.	Range.	Acres.
Edmund McGehee.....	Fr'l sections.....	32			
	W. f'l	33	19 S...	4 W...	536.24
	Section.....	34			
	E. ½	28			
	Section.....	22			
	do.....	27			
	do.....	14			
	do.....	15			
	W. ½ W. ½.....	13			
	N. E.....	13			
	E. ½ S. E.....	13			
	E. ½	9			
	Section.....	10			
	do.....	11			
	do.....	12			
	do.....	1			
	do.....	2			
	do.....	3			
	E. ½.....	4			
	E. ½ W. ½.....	4	16 S...	S. W...	8,581.01
	N. E.....	31			
	E. ½ S. E. ¼.....	31			
	Section.....	28			
	do	29			
	do.....	32			
	do.....	33			
	E. ½	21			
	S. ½	22			
	Section.....	23			
	do.....	23			
	do.....	27			
	do.....	34			
	do.....	35			
	do.....	36			
	S. W.....	25	14 S...	3 W...	7,440
	N. E.....	12	13 S...	3 W...	320
	W. ½ of E. ½.....	13	"	"	320
	W. ½.....	23			
	W. ½ of E. ½	23			
	E. ½	22			
	N. W	22			
	N. ½ of N. E. ¼...	27			
	W. ½ of N. W. ¼...	26			
	S ½ of S. W. ¼...	26			
	N. ½	35			
	W. ½ of N. W. ¼...	36			
	S. E. ¼ of N. W...	36			
	N. ½ of S. W.....	36			
	N. ½ of S. E. ¼.....	36			
	E. ½ of N. E. ¼.....	36			
	S. W. ¼ of N. E...	36	12 S...	34.....	1,920
	N. ½	4			
	W. ½ of N. W. ¼..	3			
	S. E. ¼.....	9			
	S. ½ of S. W. ¼...	9			
	S. W. ¼.....	10			

Statement—Continued.

	Part Section.	Section.	Township.	Range.	Acres.
Edmund McGehee.....	N. W. ¼.....	15			
	S. ½.....	21	13 S...	3 W...	1,193.28
	N. ½.....	17	13 S...	3 W...	320.00
	N. ½ of S. W. ¼...	29			
	W. ½ of S. W. ¼..	11			
	S. E. ¼ of S. W. ¼, and S. ½ of S. E ¼	24			
	E. ½ of N. E. ¼, & N. E. ¼ of S. E. ¼	32			
	W. ½ of S. W. ¼...	33			
	W. ½ of N. W. ¼, & N. W. ¼ of S. W. ¼	34	12 S...	3 W...	600.00
	S. ½ of S. W. ¼, & N. W. ¼ of S. W. ¼	3	15 S...	3 W...	120.00

You are hereby enjoined and restrained from listing any of said lands for taxation, or collecting taxes thereon, until ten years from the date of their entry.

In testimony whereof, I, Samuel N. Caughey, clerk of the circuit court, in and for the county of Chicot, State of Arkansas, [L. S.] have hereunto set my hand and affixed the seal of said court, at office, this 15th day of March, A. D. 1858.

SAMUEL N. CAUGHEY, *Clerk*.
By S. L. DORSEY, *D. C.*

Summons.

STATE OF ARKANSAS,
County of Chicot, ss.

State of Arkansas to the Coroner of Chicot county, greeting:

You are hereby commanded to summon M. R. P. Mathis, if he be found within your bailiwick, to appear before the judge of our circuit court of Chicot county, in chancery sitting, at the court-house, in the county aforesaid, on the first day of our next March term, at a court to be holden on the 29th day of March next, then and there to answer a bill in chancery exhibited against him by Edmund McGehee, and that you make due return of this writ to said court.

In testimony I have hereunto set my hand as clerk of said court, [SEAL.] and affixed the seal of office, this 16th day of March, A. D. 1858.

S. N. CAUGHEY, *Clerk*.
By S. L. DORSEY, *D. C.*

(*Endorsed:*)

Executed this writ on the within named Martin R. P. Mathis, at his residence in the county of Chicot, on the 24th day of March, 1858, by then and there leaving a true copy, of which this is the original, with Mrs. Mathis, a free white person over the age of 15 years, a member of his family.

Fee service, 50; copy, 50; mileage 1 20—$2 20.

SAM. PARKER,
Coroner Chicot Co.

And now, at this day, to wit, on the 29th of March, A. D. 1858, it being the first day of the March term of said circuit court, 1858, there was an order made in this cause, in the words and figures following, to wit:

EDMUND MCGEHEE, Compl't,
vs.
MARTIN R. P. Mathis, as Sheriff, &c., Def't. } Injunction.

The complainant having heretofore, on the 6th day of March, A. D. 1858, presented his bill for an injunction to restrain the sheriff aforesaid from selling certain lands therein named, for non-payment of levee taxes thereon, and the court having, on inspection and consideration thereof, made the order as therein and thereby prayed for, and the writ having issued under the certificate and seal of said court, with a full description of said lands, it is, on their motion, ordered, that this cause stand on the docket of this court, and that said sheriff is hereby ordered to withhold said lands from sale until the further order of this court.

And now, at this day, to wit, the 1st day of April, 1858, and 4th day of the March term of said court, the following order was made, to wit:

E. MCGEHEE, Comp't,
vs.
M. R. P. MATHIS, as Sheriff, &c., Def't.

Now, on this day, come said parties by their solicitors, and this cause is ordered be continued until the next term of this court, with leave for said defendant to plead, answer or demur to complainant's bill of complaint, at the said term of this court next ensuing.

Answer.

In the Chicot Circuit Court, October term, A. D. 1858.

STATE OF ARKANSAS, *Chicot County.*

The answer of Martin R. P. Mathis, as sheriff and collector of Chicot county, to the bill of complaint exhibited in said court against him, by Edmund McGehee.

The respondent, saving and reserving, &c., for answer to the said bill, says:

That he admits that he was and is the sheriff and ex-officio collector of Chicot county, duly commissioned and qualified admits that he was proceeding to collect the taxes enjoined, as he had a lawful right to do; admits the passage of the act of Congress granting swamp lands to this State, and the passage of the several acts of the legislature of Arkansas set out in the bill; and for greater certainty refers to all of said acts, and prays that they may be considered as part hereof, as far as the same may be essential to determine the controversy.

He admits that all the lands mentioned in the bill are, and were confirmed swamp lands, which were sold by the said State to the complainant, and that complainant is the owner thereof as represented by him, and that complainant is a citizen of the State of Tennessee; respondent admits, that the complainant purchased the said lands after the passage of the act of the 11th of January, A. D. 1855, but does not know nor admit that they were purchased and entered with scrip issued upon contracts for levee work made prior to the said 11th of January, 1855, and requires proof thereof; but respondent submits that it is wholly immaterial, and that in any event the said lands were taxable, according to laws in force, the act exempting swamp lands from taxation having been repealed before the purchase and entry of said lands by the complainant.

The respondent admits that the auditor did furnish the list of said lands for assessment and taxation in due form of law; and that he, as sheriff and ex officio collector of Chicot county, proceeded to list and assess the same, as alleged in the bill, and in due form of law; but the State and county taxes are not in controversy in this suit, the same having been stricken out of the assessment by the county court, and the levee tax only is in controversy.

The respondent admits that the lands were listed and assessed for levee tax for the year 1857, in accordance with the requisitions of an act of the general assembly of said State, approved 7th of January, 1857, entitled "An act to provide for making and repairing levees in Chicot county," and to which act respondent refers for greater certainty, and prays that the same may be considered as part hereof, and that the county court of said county, on assessment lists duly returned by the levee inspectors, in accordance with the said act, did proceed to levy a levee tax of one-fourth of one per cent. on alluvial lands in said county, that would be benefited by levees, embracing the lands mentioned in the bill, and which were and are alluvial lands, such as would be benefited by levees, and as such subject to the tax under the said law; and the valuation and price per acre was fixed; and the assessment list of the said lands, and others of like character, being made out in

manner and form as in the said act indicated, came to the hands of this respondent, as such sheriff as aforesaid, with proper warrant to collect the same; and the levee tax being wholly unpaid, and the complainant refusing to pay the same, the respondent gave notice for the sale thereof, as provided by the said act, and would have sold the same, as he submits he is bound to do and ought to have done, but was prevented by the injunction granted in this court.

And this respondent avers that under the said act levee inspectors were duly elected and a board organized, officers elected, the said assessment list regularly made out and perfected, and all proceedings had strictly in accordance with the act, will partly appear from exhibits attached to this answer, and prayed to be taken and considered as part hereof, as if the same were here incorporated.

The respondent respectfully insists that the said act is valid and obligatory, and does not impair the obligation of any contract, nor is it in any respect in conflict with the constitution of the State of Arkansas, or the United States, and is only the lawful exercise of the sovereign right of taxation reserved to government.

This respondent submits that, as by law he is responsible for the said tax, and required by law to collect and pay the same over, that this honorable court will decree the sale of the said lands charged therewith, or so much thereof as shall be necessary to discharge the same, with all costs and penalties, unless the said levee tax shall be paid by some short day to be fixed by the court; and that the injunction may be dissolved.

This respondent further answering, submits and insists that there is no equity in said bill, and that the complainant is not entitled to the relief therein nor to any relief, and that the court has no jurisdiction to restrain the collection of said tax whatever; and this respondent will insist on these defences at the hearing, and hopes to have the same benefit thereof as if he had formerly demurred to the bill for these causes.

And this respondent, having sufficiently answered the said bill, prays for a decree for the dissolution of the injunction and payment of said levee tax, and that he may be discharged with his costs in this behalf.

S. H. HEMPSTEAD,
Sol. for Def't.

STATE OF ARKANSAS,
County of Chicot, sct.

Martin R. P. Mathis states that the matters in the foregoing answer, as far as stated on information, he believes to be true; and as far as stated on his own knowledge, are true.

M. R. P. MATHIS, *Sh'ff.*

Sworn to and subscribed this 7th day of October, 1858.

S. N. CAUGHEY, *Cl'k*.

Endorsed: Filed October 8th, A. D. 1858.

S. N. CAUGHEY, *Cl'k*.

Exhibits.

Exhibits referred to in the foregoing bill are as follows, to wit:

The county court, at the January adjourned term, 2d day, February 24, 1857, made the following order appointing the levee inspectors, as follows, to wit:

Order 1.

On motion of L. L. Johnson, esq., seconded by F. G. Davis, it is ordered that Charles W. Campbell, Daniel H. Sessions, Joshua M. Craig, Nathan Ross and Romulus Payne be and they are hereby appointed levee inspectors of this county, in accordance with the statute in such case made and provided.

Be it remembered, that on the 24th day of February, A. D. 1857, the board of levee inspectors for the county of Chicot, Arkansas, appointed by the county court of said county, met at the courth ouse, in the town of Lake Village: present, Charles W. Campbell, Daniel H. Sessions, Joshua M. Craig and Nathan Ross.

The board proceeded to lay off the county into five districts, at the above term, as follows:

Order 2.

Ordered, that levee district number one commence at the Desha county line, and extend down the Mississippi river, to the line between townships 13 and 14; thence, with said line, to the Drew county line; thence up the line dividing Chicot and Drew counties to the Desha county line; thence on the line dividing the counties of Chicot and Desha to the Mississippi river, the place of beginning; and that Charles W. Campbell be appointed inspector of said district.

2*d District—Order* 3.

Ordered that levee district number 2 commence at the line dividing townships 13 and 14 on the Mississippi river; thence down said river to the line dividing sections 15 and 22, in township 15 south, range one west; thence west on said line to the line dividing the counties of Drew and Chicot; thence up said line to the line between townships 13 and 14; thence east on said line to the Mississippi river; and that Daniel H. Sessions be appointed inspector of said district.

3*d District—Order* 4.

Ordered that levee district "No. 3" commence at the line dividing sections 15 and 22, in township 15 S., R. 1 west, on the Mississippi river; thence down said river to the section line between

sections 25 and 36, in township 16 S., R. 1 west; thence west on said line to the western boundary of the county; thence up said boundary to the line dividing sections 18 and 19, in township 15 S., R. 3 west; thence east on said line to the Mississippi river; and that Joshua M. Craig be appointed inspector of said district.

District No. 4.

Ordered that district No. 4 commence at the section line between sections 25 and 36, on the Mississippi river, in township 16 south, R. 1 west; thence down said river to the line between sections 11 and 14, in township 18 S., R. 1 W.; thence west on said line to the western boundary of the county; thence up the boundary of said county to the line between sections 30 and 31, in township 16 S., R. 3 W.; thence east on said line to the river; and that Nathan Ross be appointed inspector of said district.

No. 5.

Ordered that levee district No. 5 commence at the line between sections 11 and 14, in township 18, R. 1 W., on the Mississippi river; thence down said river to the line between the State of Arkansas and Louisiana; thence on said line to the western boundary of the county; thence up said boundary to the line between sections 10 and 15, in township 18 S., R. 4 west; thence east to the Mississippi river; and Romulus Payne be appointed inspector of said district.

Order for Contracts.

Ordered by the board, that the inspectors in the different levee districts be authorized and empowered for the present to contract for the building and repairs of levees at the following prices, to wit: for levees from 3 to 5 feet high not more than 20 cents per cubic yard, and for all levees more than five feet high not more than twenty-five cents per cubic yard.

The board proceeded this day to ballot for a treasurer of the board, and on such balloting Lycurgus L. Johnson was elected by acclamation.

Order No. 1.

Ordered by the board, that the secretary of this board proceed forthwith to make out a list of all the lands in this county for the use of the board, designating in such list by the legal subdivision of each section by township and range, placing opposite each tract the names of the owners of said lands, and that he have such list ready for the inspection of the board at the adjourned term, to be held on the 14th day of April next.

Order No. 2.

Ordered by the board, that the respective levee inspectors, in the case of emergency, be and they are hereby authorized and empowered to employ one or more suitable persons to assist them in the discharge of their respective duties as such inspectors, and to pay them such compensation as they may think proper for their services.

Order No. 3.

Ordered by the board, that in the construction of new levees under the superintendence of the levee inspectors, there shall be a ditch cut on the inside of all such levees, at a distance of ten feet from the base; and it is further ordered, that no dirt for the construction of any levee shall be taken from the outside of said levee nearer than ten feet from the base of the levee.

Order No. 4.

Ordered by the board, that each levee inspector be and they are hereby required (if they shall think it necessary in their respective districts) to set stakes at high-water mark every one hundred yards on the route of said levees in their districts, to enable said inspectors to make a correct estimate of the amount of work necessary to be done, and that they report the costs thereof to the next meeting of this board.

Order No. 5.

Ordered by the board, that each levee inspector be required to make an estimate, in cubic yards, of all work necessary to be done in their respective districts for the erection of new levees and the repair of old levees, and present the same to the next May meeting of this board.

Order 6.

Ordered by the board, that each levee inspector be required to present an estimate of work done in their respective districts since their appointment, at the next May meeting of the board.

Ord. 7.

Ordered by the board, that $10,000 be, and the same is hereby, appropriated toward the building of the levee reported by Romulus Payne, as inspector for district No. 5, across the upper end of the Bernard place, a distance of 120 poles; across G. W. Polk's plantation, 320 poles; across the Herndon place, 80 poles, and 180 poles of old levee to be repaired up to the line between sections 11 and 14, township 18 south, of range one west, and that said inspector proceed to lay off, give notice, and let out the building and repairing said levee, to be completed on or before the first day of January, A. D. 1858.

Order 8.

Ordered by the board, that five thousand dollars be, and the same is, appropriated towards the building of the levee reported by Nathan Ross, inspector for district No. 4, commencing at the bend in the old levee near the lower end of section one, township eighteen south, range one west, and running up the river through said section one hundred and eighty-six poles on the lands of Nathan Ross and Goza & Griffin, to intersect the old levee, and for the digging of a ditch four feet wide and five feet deep, and three hundred and twenty poles long, and filling the same in front of J. C. Ford's levee; and that said inspector proceed to lay off, give notice, and let out the building of said levee, to be completed on or before the first day of January, A. D. 1858.

Order 9.

Ordered by the board, that four thousand dollars be, and the same is hereby, appropriated towards the repairing of the levee reported by Joshua M. Craig, inspector for district No. 3, commencing at the township line between township fifteen south, range one east and one west, near the southwest corner of section nineteen, and running down the river one hundred and sixty rods, and from the middle of section twenty-five, township fifteen south, range one west, to the Tempy levee and the side levee of Mrs. F. M. Walker's, from near the southwest corner of section twenty-seven, township fifteen south, range one west, four hundred and eighty rods to the turn of the levee near Mrs. Walker's residence; and the building of a new levee from near the township line between township fifteen south, range one east and one west, near the corner of section thirty, township fifteen south, range one east, sixty rods to intersect the Old levee, and to repair the old levee from Mrs. Walker's to Old river bayou; and that said inspector proceed to lay off, give notice, and let out the building of the same, and that the same be completed on or before the first day of January, A. D. 1858.

Order 10.

Ordered by the board, that four thousand two hundred dollars be, and the same is, appropriated towards the repairing of the levee in Sorrell's bend, between Gaines' landing and the Panther Forest field, and that the inspector for district No. 2 *to* give notice and let out the repairing of said levee, to be completed on or before the first day of January, A. D. 1858.

Order 11.

Ordered by the board, that the following shall be the maximum prices to be paid for the building and repairing of all levees, viz: For all levees under five feet in height, in cleared lands, thirteen cents in cubic yards; for all levees five feet and over in height, in

cleared land, sixteen cents per cubic yard; for all levees under five feet in height, in wood land, fifteen cents per cubic yard; for all levees five feet and over in height, in wood land, eighteen cents per cubic yard.

Order 12.

Ordered by the board, that the president of the board of levee inspectors be, and he is hereby, authorized and instructed to apply and contract with the State engineer for the building of all the levees in the county of Chicot, which may be let out under the provisions of the supplementary act of the general assembly.

Approved 13th January, 1857.

Order 13.

Ordered by the board, that the order passed at the last May meeting of the board, appropriating four thousand two hundred to repairing the levee in Sorrell's bend, between Gaines' landing and the Panther Forest field, be rescinded, and that the levee inspector of district No. 2 be allowed to appropriate said sum, or so much thereof as necessary, between Gaines' landing and Panther Forest, and between Luna and Junius W. Craig's residence.

Be it remembered, that at the meeting of the board of levee inspectors, held on the first Monday of November, 1857, it being the regular meeting of said board—present, C. W. Campbell, president, Nathan Ross and Romulus Payne, members—the board being ready for the despatch of business, the following proceedings were had, to wit:

Order 14.

On reading the letter of E. McGehee, it is ordered that said McGehee be allowed ninety days from this date to pay his levee tax on his lands in this county; and that the secretary be and he is hereby instructed to advise said McGehee of this order.

Sheriff's Receipt.

STATE OF ARKANSAS,
County of Chicot.

Received of Samuel N. Caughey, clerk of the circuit court and ex-officio secretary of the board of levee inspectors within and for the county of Chicot aforesaid, the levee tax-book of said board of levee inspectors for the year A. D. 1857, wherein the levee tax is stated to be thirty-four thousand seven hundred and ninety-one dollars and sixty-nine cents.

M. R. P. MATHIS,
Sheriff and Ex Officio Collector of the Levee Tax of Chicot County, Ark's.

Lake Village, Chicot county, Ark's, October 7th, A. D. 1857.

The following is a true and perfect transcript of the lands assessed to Edmund McGehee for levee purposes for the year A. D. 1857, as the same now remains on file in my office.

Present owner of land.	¼, ½, or part of ½ section—¼ or ½ section.	Number of section.	Number of township.	Number of range.	Number of acres.	Hundredths.	Value of land and improvements.	Total value.
E. McGehee	W. ½	2	12	2 W.	320	.....	$10	$3,200
	W. ½ and N. E. ¼	3	"	"	480	.....	"	4,800
	All	4	"	"	690	96	"	6,909
	E. ½ and E. ½ W. ½	5	"	"	514	96	"	5,144
A. McGehee	S. W. ¼ and W. ½ S. E. ½	15	"	"	240	.....	"	2,400
	W. ½ and S. E. ¼	21	"	"	480	.....	"	4,800
	W. ½ and W. ½ E. ½	22	"	"	480	.....	"	4,800
	N. W. ¼	27	"	"	160	.....	"	1,600
E. McGehee	All fr'l	30	"	"	609	78	"	6,110
A. McGehee	N. E. fr	6	12	12	116	39	"	1,163
	N. ½ and S. E. ¼ and E. ½ S. W.	5	"	"	487	14	"	4,871
	E. ½ S. E. ¼	8	"	"	80	.....	"	800
	S. ½	9	"	"	320	.....	"	3,200
	W. ½ N. W. ¼ and N. W. ¼ S. W. ¼.	32	"	"	120	.....	"	1,200
E. McGehee	E. ½ N. E. ¼	20	13	2 W.	80	.....	"	800
	S. W. ¼ N. W. ¼	21	"	"	40	.....	"	400
	N. W. ¼ N. W. ¼ and W. ½ S. W. ¼.	21	"	"	120	.....	"	1,200
	S. E. ¼	27	"	"	160	.....	"	1,600

STATE OF ARKANSAS,
County of Chicot.

I, Charles W. Campbell, levee inspector, heretofore appointed by the county court of Chicot county, for levee district number one, in said county of Chicot, do solemnly swear that the foregoing seventeen pages contain a true and perfect list and assessment of all lands in said district number one, which would be benefited by levees, and which are subject to taxation for levee purposes, so help me God, to the best of my information.

C. W. CAMPBELL,
Inspector for Levee District No. 1.

Sworn to and subscribed before me this 21st day of April, A. D. 1857.

SAM. N. CAUGHEY,
Clerk Chicot Circuit Court.

	½, ¼, or part of section—¼ or ½ section.	Section.	Town.	Range.	Acres.	Hundredths.	Value per acre.	Total value.
E. McGehee.....	N. W. pt.....	2	14	2	Not mentioned.		$10	
	E. f'l ½.....	3	"	"				
	E. ½ and E. ½ S. W. and E. ½ N. W.	10	"	"	480	.....	"	$4,800
	N. ½ S. E. ¼ and N. ½ S. W. ¼	11	"	"	160	.....	"	1,600
	E. ½ and N. W. ¼ and E. ½ of S. W. ¼.	17	14	3 W.	560	.....	"	5,600
		21	"	"	640	.....	"	6,400

	22	"	"	640	.....	"	6,400
All.....	23	14	3 W.	640	.....	"	6,400
W. ½.....	24	"	"	320	.....	"	3,200
All.....	28	"	"	640	.....	"	6,400
Do.....	4	15	3 W.	640	.....	"	6,400
Do.....	5	"	"	640	.....	"	6,400
Do.....	8	"	"	640	.....	"	6,400
Do.....	9	"	"	640	.....	"	6,400
W. ½ and W. ½ S. E. ¼.....	10	"	"	400	.....	"	4,000
All.....	15	"	"	640	.....	"	6,400
Do.....	17	"	"	640	.....	"	6,400

STATE OF ARKANSAS,
County of Chicot.

I, Daniel H. Sessions, levee inspector, heretofore appointed by the county court of Chicot county for levee district number two, in said county of Chicot, do solemnly swear that the foregoing fourteen pages contain a true and perfect list and assessment of all lands in said district number two, which would be benefited by levees, and which are subject to taxation for levee purposes, so help me God.

DANIEL H. SESSIONS,
Inspector for Levee District No. 2.

Sworn to and subscribed before me this 15th day of April, A. D. 1857.

SAM. N. CAUGHEY, *Clerk.*
By B. F. STEPHENSON, *D. C.*

	¼, ½, or p't sec.—¼ or ½ section.	Sec.	Town.	Range.	Acres.	Hundredths.	Value per acre.	Total value.
E. McGehee	All	S. 20	T. 15	R. W. W.	640	.....	$10	$6,400
	Do	21	"	"	640	.....	"	6,400
	W. ½ W. ½	22	"	"	160	.....	"	1,600
	W. ½ W. ½ of E. ½	28	"	"	400	.....	"	4,000
	W. ½ and W. ½ E. ½	33	"	"	480	.....	"	4,800
A. McGehee	All	S. 6	16	2 W.	640	.....	"	6,400
	Do	7	"	"	640	.....	"	6,400
	W. ½ and N. E. ¼	18	"	"	481	.....	"	4,800
	W. ½	19	"	"	320	.....	"	3,200
E. McGehee	All	1	16	3 W.	640	.....	"	6,400
	Do	2	"	"	640	.....	"	6,400
	Do	3	"	"	640	.....	"	6,400
	E. ½ and E. ½ W. ½	4	"	"	480	.....	"	4,800
	E. ½	9	"	"	320	.....	"	3,200
	All	10	"	"	640	.....	"	6,400
	Do	11	"	"	640	.....	"	6,400
	Do	12	"	"	640	.....	"	6,400
	W½ W. ½ and N. E. ¼ and E. ½ S. E. ¼.	13	"	"	400	.....	"	4,000
	All	14	"	"	640	.....	"	6,400
	Do	15	"	"	640	.....	"	6,400
	Do	22	"	"	640	.....	"	6,400

Do	27	"	"	640	.....	"	6,400
E. ½	28	"	"	320	.....	"	3,200

STATE OF ARKANSAS,
County of Chicot.

I, Joshua M. Craig, levee inspector, heretofore appointed by the county court of Chicot county, for levee district number three in said county of Chicot, do solemnly swear that the foregoing thirteen pages contain a true and perfect list and assessment of all lands in said district number three, which would be benefited by levees, and which are subject to taxation for levee purposes, so help me God, to the best of my information.

J. M. CRAIG,
Levee Inspector for District No. 3.

Sworn to and subscribed before me this 21st day of April, A. D. 1857.

SAM. N. CAUGHEY,
Cl'k of the Chicot Circuit Court.

	¼, ½, or pt. of ¼ sec.—¼ or ½ section.	Section.	Town.	Range.	Acres.	Hundredths.	Value per acre.	Total value.
E. McGehee	All	33	16	3 W.	640	.....	$10	$6,400
	"	34	"	"	640	.....	"	6,400
A. McGehee	W. ½	2	17	"	321	76	"	3,217
	All	3	"	"	653	18	"	6,531
	"	4	"	"	650	84	"	6,508

List—Continued.

	¼, ½, or pt. of ½ sec.—¼ or ½ section.	Section.	Town.	Range.	Acres.	Hundredths.	Value per acre.	Total value.
A. McGehee.....	All.....	5	17	3 W.	654	17	$10	$6,541
	E. ½.....	6	"	"	320	.....	"	3,200
	All.....	9	"	"	640	.....	"	6,400
	"	10	"	"	640	.....	"	6,400
	W. ½ S. E. ¼.....	11	"	"	80	.....	"	800
	N. ½ and S. E. ¼.....	12	17	3 W.	480	.....	"	6,400
	S. W. ¼ N. E. ¼.....	14	"	"	40	.....	"	400
	W. ½ and N. E. ¼ and S. ½ S. E. ¼.	15	"	"	560	.....	"	5,600
	All.....	17	"	"	640	.....	"	6,400
	"	20	"	"	640	.....	"	6,400
	"	23	"	"	640	.....	"	6,400
	W. ½ and N. ½ N. E. ¼ and S. ½ S. E. ¼.	26	"	"	480	.....	"	4,800
	All.....	33	"	"	640	.....	"	6,400
	"	34	"	"	640	.....	"	6,400
	W. ½.....	35	"	"	320	.....	"	3,200
	All.....	3	18	R. 3 W.	641	86	"	6,418
	"	4	"	"	633	17	"	6,331
	"	5	"	"	606	05	"	6,060

E. ½	6	"	"	310	16	"	3,101
W. E. ¼ and W. ½ S. E. ¼	7	"	"	240	.....	"	2,400
All	8	"	"	640	.....	"	6,400
"	9	"	"	640	.....	"	6,400
"	10	"	"	640	.....	"	6,400

STATE OF ARKANSAS,
County of Chicot.

I, Nathan Ross, levee inspector, heretofore appointed by the county court of Chicot county for levee district number four in said county of Chicot, do solemnly swear, that the foregoing twenty-two pages contain a true and perfect list and assesment of all lands in district number four, which are subject to taxation for levee purposes, so help me God, to the best information I have.

NATHAN ROSS,
Levee Inspector Dist. No. 4.

Sworn to and subscribed before me, this 21st day of April, A. D. 1857.

SAM. N. CAUGHEY,
Cl'k Chicot Circuit Court.

	¼, ½, or pt. ¼ sec.—¼ or ½ section.	Section.	Town.	Range.	Acres.	H'dths.	Value per acre.	Total value.
A. McGehee.....	All.....	17	18	3 W.	640	.....	$10	6,400
	E. ½.....	19	"	"	320	.....	"	3,200
	All.....	20	"	"	640	.....	"	6,400
	"	21	"	"	640	.....	"	6,400
	"	22	"	"	640	.....	"	6,400
	W. ½ W. ½.....	26	"	"	160	.....	"	1,600
	All.....	27	"	"	640	.....	"	6,400
	"	28	"	"	640	.....	"	6,400
	"	29	"	"	640	.....	"	6,400
	E. ½.....	30	"	"	320	.....	"	3,200
	E. ½.....	31	"	"	320	.....	"	3,200
	All.....	32	"	"	640	.....	"	6,400
	"	33	"	"	640	.....	"	6,400
	"	34	"	"	640	.....	"	6,400
	W. ½.....	35	"	"	320	.....	"	3,200
	N. ½.....	3	19	3 W.	320	.....	"	3,200
	All.....	4	"	"	640	.....	"	6,400
	"	5	"	"	640	.....	"	6,400
	E. ½.....	6	"	"	320	.....	"	3,200
	N. E. ¼.....	7	"	"	160	.....	"	1,600
	N. ½.....	8	"	"	320	.....	"	3,200

	W. ½ and W. ½ E. ¼ and S. E. ¼ S. E. ¼.	9	"	"	520	.....	"	5,200
E. McGehee.....	All.....	17	"	"	640	.....	"	6,400
	E. ½ S. E. ¼.....	29	"	"	80	.....	"	800
	E. ½ S. W.....	30	"	"	80	.....	"	800
	W. ½.....	2	19	4 W.	320	.....	"	3,200
	E. ½ and N. W. ¼ and N. ½ S. W.	3	"	"	560	.....	"	5,600
	N. ½.....	4	"	"	320	.....	"	3,200
	S. ½.....	5	"	"	320	.....	"	
	S. E. ¼ and E ½ N. E. ¼.....	6	"	"	240	.....	"	2,400
	E. ½ N. E. & S. E. ¼ S. E. ¼	7	"	"	120	.....	"	1,200
	N. ½ and N. ½ S. E. ¼.....	8	"	"	400	.....	"	4,000
	S. ½.....	9	"	"	320	.....	"	3,200
	S. ½ N. W. ¼ and N. ½ S. W. ¼.	10	"	"	160	.....	"	1,600
	N. W. ¼.....	15	"	"	160	.....	"	1,600
	W. ½ E. ½.....	17	"	"	160	.....	"	1,600
	W. ½ W. ½.....	20	19	4 W.	160	.....	"	1,600
A. McGehee.....	W. ½.....	21	"	"	320	.....	"	3,200
E. McGehee.....	S. ½.....	25	"	"	320	.....	"	3,200
	S. ½.....	26	"	"	320	.....	"	3,200
	S. E. ¼ S. ½ S. W. ¼.....	27	"	"	240	.....	"	2,400
	W. ½ and W. ½ S. E. ¼.....	28	"	"	400	.....	"	4,000
	All.....	29	"	"	640	.....	"	6,400
	Fr'l.....	31	"	"	228	52	"	2,285
	"	32	"	"	210	51	"	2,105
	W. ½.....	33	"	"	90	20	"	902

STATE OF ARKANSAS,
County of Chicot.

I, Romulus Payne, levee inspector, heretofore appointed by the county court of Chicot county for levee district number five in said county of Chicot, do solemnly swear, that the foregoing twenty-four pages contain a true and perfect list and assessment of all lands in district number five, which would be benefited be levees, and which are subject to taxation for levee purposes, so help me God, to the best of my information.

ROMULUS PAYNE,
Levee Inspector for District No. 5.

Sworn to and subscribed before me, this 21st day of April, A. D. 1857.

SAM. N. CAUGHEY,
Cl'k Chicot Circuit Court.

STATE OF ARKANSAS,
County of Chicot, ss.

I, Benjamin F. Stephenson, clerk of the circuit court, and ex-officio secretary of the board of levee inspectors, within and for said county and State, do hereby certify that the foregoing pages, numbered from 44 to 55, inclusive, do contain true and perfect copies of the orders of said board of levee inspectors, as the same now remain of record in my office, in book "A," pages 1, 2, 3, 4, 7, 9, and 11.

And I further certify that the foregoing pages numbered from 55 to 64, inclusive, do contain a true and perfect transcript of the lands assessed to Edmund McGehee, for levee purposes, together with the endorsements, &c. thereon, for the year A. D. 1857, as the same now remains on file in my office.

In testimony whereof, I have hereunto set my hand as secretary of said board of levee inspectors, and affixed my private seal (having no official seal) at office this the 15th day of December, A. D. 1858.

[SEAL.]

B. F. STEPHENSON,
Secretary.

Agreement of Counsel.

EDMUND MCGEE
vs.
MARTIN R. P. MATHIS. } Agreement.

It is agreed as follows:

1st. That the lands mentioned in the bill, situate in Chicot county, are confirmed swamp lands, and were purchased by the

complainant with scrip issued upon levee contracts made prior to the 11th of January, 1855, but were actually purchased and entered after the passage of that act. They are what are known as alluvial lands, and are owned by *McGee*, who is a non-resident and a citizen of the State of Tennessee.

2d. Upon the act of the 11th of January, 1855, the said lands were furnished to the defendant as assessor of Chicot county by the auditor, in due form of law, and by such assessor regularly assessed for the year 1857, for State and county taxes, and those taxes being stricken out by the county court, leaves only the levee tax as the subject-matter of controversy.

3d. Under the act of the 7th January, 1857, concerning levees in Chicot county, levee inspectors were elected, a levee board constituted, meetings held, the county divided into levee districts, the assessment lists made out and returned and passed on by the county court, the valuation and tax fixed, as appears by the exhibits to the answer, and the levee tax-book delivered to the defendant, as sheriff, all in due time; and according to that act, the levee tax thus assessed being wholly unpaid, publication and advertisement was made in strict accordance with that act, and the sale prevented by the injunction.

4th. The steps taken, and proceedings had, have been in accordance with said act, but the complainant insists that the act is unconstitutional, and that said lands are not taxable for levee purposes; the defendant affirming that they are.

5th. The levee tax assessed on said lands amounts to the sum named in the bill.

6th. Replication to the answer in short, and the case to be heard by consent at the present term on bill, answer, exhibits, replication, and this agreement.

If the bill is dismissed, the tax and costs may be decreed; appeals to be allowed without affidavit, and without security.

7th. The answer, in this case, is to be taken and received as the answer in the respective cases of James H. Wilson vs. Martin R. P. Mathis, No. 29; Charles McDermott vs. Same, No. 30; James S. Montgomery vs. Same, No. 31; Charles C. McDermott vs. Same, No. 32; William E. Bowling vs. Same, No. 33; John J. Jackson & Co. vs. Same, No. 34: replications to same in each case, and this agreement to be evidence in each case, and the cases to be heard in the same way, and appeals in the same manner.

The case of Mc*Gee* to determine the rest so far as the same facts and points arise.

As to the lands named in the bill filed by Charles McDermott, case No. 30; James S. Montgomery, case No. 31; Charles C. McDermott, case No. 32, and William E. Bowling, case No. 33, they are not subject to overflow from the Mississippi, nor protected by levees.

The respective counsel in the cases have all signed this agreement.

GARLAND & RANDOLPH & ROBINSON,
for McGehee and John J. Jackson & Co.
ROBINSON & SUTTON,
for James H. Wilson.
W. M. HARRISON, HAYES & LOCKE,
for McDermotts, Bowling and Montgomery.
J. H. HEMPSTEAD,
for Defendant.

Endorsed: Filed October 8th, 1858.
S. N. CAUGHEY, *Cl'k.*

The county court of Chicot county, Arkansas, at the April term, 2d day, and on the 21st day of April, A. D. 1858, made the following order, to wit:

This day came into court Charles W. Campbell, as president of the board of levee districts, and filed a list of lands, taxable for levee purposes, under the provisions of an act entitled An act to provide for making and repairing levees in Chicot county, affixing to said list a valuation of said lands, as required by said act, which said list was duly certified, and sworn to by Nathan Ross, Romulus Payne, Joshua M. Craig, Daniel H. Sessions and Charles W. Campbell, as levee inspectors, each for his own district.

Rate of Taxes.

Whereupon, it is ordered by the court that a tax of five-eighths of one per centum be levied and collected on the assessed value per acre of all the alluvial lands in this county, that are or will be benefited by levees, and which are or shall be taxable for State revenue, according to the value of said lands, as fixed by the assessment of said board of levee inspectors; and the collector of taxes for this county is hereby authorized and required to make collection of said levee tax, on or before the first day of December, 1857.

State of Arkansas,
County of Chicot.

I, Benjamin F. Stephenson, clerk of the circuit court and ex-officio clerk of the county court within and for the county and State aforesaid, do hereby certify, that order of the county court on page 44, [page ,] (of the foregoing bill,) is correctly copied from the county court record E, page 246.

And I further certify that the foregoing page contains a true copy of the order of the county court, as the same appears on said record E, pages 256 and 257, now of record in my offie.

Witness my hand, and the seal of said county court hereto affixed at my office, this, the 15th day of December, A. D. 1858.
[L. S.]

B. F. STEPHENSON, *Clerk*.

Final Decree.—"Extract from Minutes."

EDMUND MCGEE, Comp't,
vs.
MARTIN R. P. MATHIS, as Sheriff of Chicot county, Def't.

Filing Ans., Issue, &c.

This day came the complainant by his solicitor, and also the defendant by S. H. Hempstead, his solicitor, and filed his answer herein, and to which the complainant entered his general replication in short on the record by consent, and the defendant also filed an agreement of counsel in writing as to facts, and by consent of parties this cause came on for final hearing, on bill, answer, replication thereto, and exhibits filed in the cause, and on the said agreement of counsel as evidence, and after argument of counsel, the court here is of opinion that there is no equity in said bill, and that the same ought to be dismissed and injunction dissolved.

Decree.

It is therefore ordered, adjudged, and decreed by the court here, that the injunction granted in this cause be dissolved, and that the bill be dismissed; and it is further decreed that the defendant do have and recover from the complainant all his costs in this behalf expended.

From which decree the complainant prayed an appeal to the supreme court; and the affidavit being waived, the appeal was granted, and, by consent, to operate as a supersedeas, without security.

STATE OF ARKANSAS,
County of Chicot.

I, Benjamin F. Stephenson, clerk of the circuit in and for the county of Chicot and State of Arkansas, do hereby certify that the foregoing pages, from 1 to 74, and this page, contain a full, true, and complete transcript of the records and proceedings in the suit of Edmund McGehee, complainant, and Martin R. P. Mathis, sheriff of Chicot, Arkansas, defendant, on the chancery side thereof, as the same now appears from the records and files of my office.

In testimony whereof, I have hereunto set my hand as such clerk, and affixed the seal of said court, at office in Lake Village, this 15th day of December, A. D. 1858.
[L. S.]

B. F. STEPHENSON, *Clerk*.

And afterwards, to wit, at a supreme court of said State, begun and held on the first Monday of January, A. D. 1859, were the following proceedings, on the 10th day of January of said term:

Assignment of Errors.

At this day comes said appellant, by his solicitor; and, on motion, it is ordered that his assignment of errors be filed, and thereupon the same is filed.

Which said assignment of errors is in the following words:

Comes said appellant and says, that in the record and proceedings, as well as in the rendering of the decree in said cause, in the court below, there is manifest error, in this:

1st. The court below erred in dismissing the bill of complaint in said cause.

2d. The court erred in dissolving the injunction granted in said cause.

3d. The decree of the court below was in favor of appellee, against appellant, when it should have been in favor of appellant, against appellee.

Wherefore, and for other errors, he prays that the same may be reversed.

GARLAND & RANDOLPH,
For Appellant.

And afterwards, to wit, on the 25th day of March, of said term, were the following proceedings:

On motion, it is ordered that this cause be continued until the next term.

And afterwards, to wit, at a term of said court commencing on the first Monday in October, to which this cause was continued by operation of law, were the following proceedings, on the 12th day of November, of said term:

Joinder in Errors.

At this day comes said appellee, by his solicitor; and, on motion, it is ordered that his joinder in errors be filed, and thereupon the same is filed.

And at the same time comes said appellant, by his solicitor; and this cause is submitted on briefs, and by the court taken under advisement.

Which said joinder in errors is in the following words:

And the said appellee, by his solicitor, comes into this honorable court and says that there is no error, either in the record and proceedings aforesaid or in rendering the decree aforesaid, and he prays that the court here may proceed to examine, as well the record and proceedings aforesaid as the matters above assigned for

error, and that the decree aforesaid, in form aforesaid given, may in all things be affirmed, with damages and costs.

S. H. HEMPSTEAD.

And afterwards, to wit, on the said 28th day of January, A. D. 1860, were the following proceedings, to wit:

Final Decree.

This cause came on to be head upon the transcript of the record of the circuit court of Chicot county in chancery, and was argued in this court by the solicitors of the parties; on consideration whereof, it is the opinion of the court that there is no error in the proceedings and decree of said circuit court in chancery in this cause.

It is therefore ordered and decreed that the decree of said circuit court in chancery in this cause be, and the same is hereby, in all things affirmed, with costs. It is further ordered and decreed that said appellee recover of said appellant all his costs in this court in this cause expended, and have execution thereof.

And afterwards, to wit, on the 10th day of February, A. D. 1860, came said appellant, by his solicitor, and presented a writ of error, issued from the circuit court of the United States for the eastern district of Arkansas, to remove this cause to the Supreme Court of the United, duly allowed by the chief justice of this court, and filed therewith an appeal bond, in the following words:

Appeal Bond.

Know all men by these presents, that we, Edmund McGehee, as principal, and John Robinson, as security, are held and firmly bound unto the above named Mathis in the sum of thirty thousand dollars, to be paid to the said Mathis or his successors in office, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 7th day of February, A. D. 1860. Whereas the above named Edmund McGehee has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the supreme court of the State of Arkansas: Now, therefore, the condition of this obligation is such, that if the above named Edmund McGehee shall prosecute his said writ of error to effect, and answer all damages and costs if he fail to make good his plea, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

E. McGEHEE, [SEAL.]
JNO. ROBINSON. [SEAL.]

Sealed and delivered in the presence of—

Endorsement.

Having fixed the amount of the within bond at thirty thousand dollars, and being satisfied with the security, it is approved.

Feb'y 7th, 1860.

E. H. ENGLISH,
Ch. J. Sup. C't.

In testimony that the foregoing seventy pages contain a full, true, and complete transcript of the record of said cause of McGehee vs. Mathis, in said supreme court, except the brief of counsel filed therein, and the opinion of the court—

I, Luke E. Barber, clerk of said supreme court, hereto set my hand and affix the seal of said court at my [SEAL.] office, in the city of Little Rock, this 27th day of February, A. D. 1860.

L. E. BARBER, *Clerk.*

UNITED STATES OF AMERICA, *ss.*

The President of the United States of America to the Judges of the Supreme Court of the State of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of a decree in a certain suit upon an appeal in chancery from the decree of the circuit court of the county of Chicot, in the State of Arkansas, which is in said supreme court of the State of Arkansas, before you, between Edmund McGehee, appellant, and Martin R. P. Mathis, as sheriff, &c., appellee, a manifest error hath happened, to the great damage of the said Edmund McGehee, as by his complaint it appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and procedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the decree and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 7th day of February, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the eighty-fourth year.

[L. S.] Attest: A. H. RUTHERFORD,
Clerk of the Circuit Court of the United States
for the Eastern district of Arkansas.

The within writ of error is allowed.

E. H. ENGLISH,
Ch. J. Sup. Ct. Ark's.

Feb. 10, 1860.

STATE OF ARKANSAS,
In the Supreme Court, ss.

I, Luke E. Barber, clerk of the supreme court of said State, do hereby certify, that in obedience to the mandate of the within writ, and the allowance thereof above, I made out and certified a full, true, and complete transcript of the record and proceedings in said cause, except the brief of counsel and opinion of the court, which said transcript is hereto attached.

In testimony whereof, I hereto set my hand as clerk of said court, and affix the seal of said court at my [SEAL.] office in the city of Little Rock, this 27th day of February, A. D. 1860.

L. E. BARBER, *Clerk.*

UNITED STATES OF AMERICA, *ss.*

To Martin R. P. Mathis, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Arkansas, wherein Edmund McGehee is plaintiff, and you, as sheriff and ex-officio assessor and collector of Chicot county, Arkansas, is defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable E. H. English, chief justice of the supreme court of Arkansas, this February 8th, 1860.

E. H. ENGLISH,
Chief Justice Supreme Court of Arkansas.

I acknowledge service of the foregoing citation, this 10th of February, 1860, at Little Rock, Ark's.

S. H. HEMPSTEAD,
Sol. for Mathis.

Filed 30th June, 1860.

SUPREME COURT OF THE UNITED STATES.

No. 189.—DECEMBER TERM, A. D. 1860.

EDMUND McGEHEE, PLAINTIFF,

vs.

MARTIN R. V. WATKINS, DEFENDANT.

ERROR TO THE SUPREME COURT OF ARKANSAS.

Brief for Plaintiff in Error.

On the 8th day of March, 1858, the plaintiff filed his bill of complaint in chancery in the circuit court of Chicot county, State of Arkansas, against the defendant in error, as sheriff and ex officio assessor and collector of said county, to restrain the collection of *general and levee taxes* due on certain lands owned by the plaintiff in that county.

The bill shows that Congress, by act of 28th September, 1850, granted all the swamp and overflowed lands unfit for cultivation within the State of Arkansas, not previously sold to such State, to make the necessary drains and levees to reclaim the same; the acceptance of such grant by the State, through her legislature, by act of January, 1851; provisions of such act relative to locating, reporting and adopting the lands intended to be embraced in such grant—the price thereof to be fixed according to the value that would be added to them by reclamation, their locality, &c.—the locality, dimensions, and extent of drains and levees to be fixed and determined. And it was provided by such act that in payment for making such drains and levees, the contractors might take so much of the lands reclaimed as would be sufficient, or the proceds of the sales thereof should be appropriated in that way, at prices before then fixed on the lands by the commissioners. The commissioners should have power to issue *land scrip, representing quarter-section*

G. S. GIDEON, Printer, 511 Ninth street, Washington.

tracts; and in this, any contractor might demand and receive in lieu of the lands payment for his work, and such scrip was transferable, and might be located on any of the unlocated swamp and overflowed lands. By the 14*th section* of such act of the legislature, *lands embraced in such grant were exempted from taxation for ten years, or until reclaimed.* This was a contract on the part of the State, which she could not violate or impair. Under the act commissioners were appointed, and they accepted and qualified, and the State was districted, and swamp lands were priced—those within six miles of navigable streams at 75 cents per acre, and those over six miles from such streams at 50 cents per acre. The legislature of Arkansas, by act of 11th January, 1855, repealed the 14th section of the act of January, 1851, and made swamp lands taxable as other lands, which act was unconstitutional, and therefore void. In 1855, 1856, and 1857, McGehee entered a number of tracts of land, situate in Chicot county, Arkansas, (particularly described in the bill,) as swamp and overflowed lands, and subject to sale as such. All of these lands were entered and located with scrip which had been issued upon contracts entered into with the commissioners and State of Arkansas prior to the 11th day of January, 1855, when the 14th section of the act of 1851, exempting such lands from taxation, was repealed, and such lands, so entered, were exempt by virtue of such 14*th section.* The plaintiff expected when he entered the lands they would be exempt from taxation, and this formed a part of his contract of sale and entry; but Mathis, as sheriff, &c., has listed and assessed some of such lands for 1857, and will proceed to sue, unless restrained by injunction; and he is proceeding to list and assess for 1858, and unless he is restrained such lands will be sold, and plaintiff greatly damaged. Taxes yearly amount to almost $5,000. The bill prays for injunction restraining Mathis perpetually from collecting the taxes assessed; his lands declared exempt for the time named in such 14*th section*, &c. &c. The injunction issued as prayed for.

Mathis appeared and answered the bill. The answer admits Mathis is sheriff; the proceedings to levy and collect the taxes as charged; passage of the law by Congress, and the several laws by the State legislature, as stated in the bill. The lands mentioned are confirmed swamp lands, entered by McGehee, and owned by him. McGehee is a citizen of Tennessee; he purchased the lands after January, 1855; but submits they were, when entered, subject to taxation, under the act of the 11th of January, 1855. State and county taxes were struck out of the list, and none remain to be colletced, except the levee taxes due under the act of the legislature of 1856 and 1857; said lands were assessed under such act, and the assessment thereon was all duly and properly made, and in every respect all the regulations of such levee act were complied with by him. The answer denies the *levee act* to be unconstitu-

tional, but insists it is a good and valid law, and insists there is no equity in the bill. The answer was replied to, and the cause was heard on bill and exhibits, answer and exhibits, replication to the answer, and an agreement of counsel filed in the case. The agreement is as follows:

1st. The lands mentioned in the bill, situate in Chicot county, are confirmed swamp lands, and were purchased by complainant, with scrip issued upon levee contracts made prior to the 11th day of January, 1855, but were actually purchased and entered after the passage of that act—they are what are known as alluvial lands, and are owned by McGehee, who is a non-resident, and a citizen of the State of Tennessee.

2d. Upon the act of the 11th of January, 1855, said lands were furnished to the defendant, as assessor of Chicot county, by the auditor, in due form of law, and by such assessor regularly assessed for 1857, for State and county taxes, and these taxes being struck out by the county court, leaves only the levee tax as the subject-matter of controversy.

3d. Under the act of the 7th of January, 1857, concerning levees in Chicot county, levee inspectors were elected, a board organized, meetings held, the county divided into levee districts, assessment lists made out and returned, and passed on by the county court, valuation and tax fixed, as appears by the exhibits to the answer, and the levee tax-book delivered to the defendant, as sheriff, in due time, and in due form, etc.; the levee tax, thus assessed, being wholly unpaid, publication and advertisement were made in accordance with the act, and the sale was prevented by the injunction.

4th. The steps taken, and proceedings had, have been in accordance with said act; but the complainant insists the act is unconstitutional, and the lands are not taxable for such levee purposes, the defendant affirming that they are.

5th. The levee tax assessed amounts to the sum named in the bill.

6th. Replication to the answer, in short, and the case to be heard by consent, at the present term, on bill, answer, exhibits, replication, and this agreement. If the bill is dismissed, the tax and costs may be decreed—appeal to be allowed without affidavit and without security.

7th. The answer in this case is to be taken and received as the answer in the respective cases of James H. Wilson vs. Mathis, Charles McDermott vs. Mathis, James S. Montgomery vs. Mathis, Charles C. McDermott vs. same, William E. Bowling vs. same, John J. Jackson & Co. vs. same—replications to the answer in each case, and this agreement to be evidence in each case, and the cases to be heard in the same way, and appeals to be taken in the same manner, and this case to determine the others, so far as the same facts and points arise.

tracts; and in this, any contractor might demand and receive in lieu of the lands payment for his work, and such scrip was transferable, and might be located on any of the unlocated swamp and overflowed lands. By the 14*th section* of such act of the legislature, *lands embraced in such grant were exempted from taxation for ten years, or until reclaimed.* This was a contract on the part of the State, which she could not violate or impair. Under the act commissioners were appointed, and they accepted and qualified, and the State was districted, and swamp lands were priced—those within six miles of navigable streams at 75 cents per acre, and those over six miles from such streams at 50 cents per acre. The legislature of Arkansas, by act of 11th January, 1855, repealed the 14th section of the act of January, 1851, and made swamp lands taxable as other lands, which act was unconstitutional, and therefore void. In 1855, 1856, and 1857, McGehee entered a number of tracts of land, situate in Chicot county, Arkansas, (particularly described in the bill,) as swamp and overflowed lands, and subject to sale as such. All of these lands were entered and located with scrip which had been issued upon contracts entered into with the commissioners and State of Arkansas prior to the 11th day of January, 1855, when the 14th section of the act of 1851, exempting such lands from taxation, was repealed, and such lands, so entered, were exempt by virtue of such 14*th section.* The plaintiff expected when he entered the lands they would be exempt from taxation, and this formed a part of his contract of sale and entry; but Mathis, as sheriff, &c., has listed and assessed some of such lands for 1857, and will proceed to sue, unless restrained by injunction; and he is proceeding to list and assess for 1858, and unless he is restrained such lands will be sold, and plaintiff greatly damaged. Taxes yearly amount to almost $5,000. The bill prays for injunction restraining Mathis perpetually from collecting the taxes assessed; his lands declared exempt for the time named in such 14*th section,* &c. &c. The injunction issued as prayed for.

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tional, but insists it is a good and valid law, and insists there is no equity in the bill. The answer was replied to, and the cause was heard on bill and exhibits, answer and exhibits, replication to the answer, and an agreement of counsel filed in the case. The agreement is as follows:

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2d. Upon the act of the 11th of January, 1855, said lands were furnished to the defendant, as assessor of Chicot county, by the auditor, in due form of law, and by such assessor regularly assessed for 1857, for State and county taxes, and these taxes being struck out by the county court, leaves only the levee tax as the subject-matter of controversy.

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8th. The lands named in the suits of the two McDermotts, Bowling and Montgomery, are not subject to overflow from the Mississippi river, nor protected by levees.

On the hearing the circuit court dismissed the bill and dissolved the injunction, and McGehee appealed to the supreme court of Arkansas, and that court affirmed the decree of the circuit court, and McGehee brings the case here for review, by writ of error.

The plaintiff in error takes the ground, that the *levee act* passed by the legislature of the State of Arkansas, at its session of 1856–'7, and under which his lands were taxed, is unconstitutional. And to show this, he maintains three propositions.

1st. The 14th section of the act of 1851, which exempted swamp lands from taxation for ten years, or until reclaimed, (*see Collection of Swamp Land Laws, p.* 8, *sec.* 14,) was an express contract, and as such formed a part of the grant itself, it being a part of the law which accepted the grant from Congress, and no subsequent legislature could interfere with it.

2d. This levee law directly misuses and diverts from its proper channel the grant of Congress, inasmuch as the act of Congress of 28th September, 1850, *section 2d*, provides that, as far as necessary to the purpose of reclaiming swamp lands by means of levees and drains, the proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied *exclusively* in that way. *See same Collection of Laws, p.* 3, *sec.* 2.

3d. That having received his scrip *representing swamp land*, which was issued to him on contracts made prior to the repeal of the 14*th section* of the act of January, 1851, although his lands were entered with this scrip after its repeal, they are as much exempt as if entered before the exempting clause was repealed.

In a cause before the supreme court of Arkansas, (19 *Arks. Reps., p.* 360,) it was held that the 14*th section* named above was a good and valid contract under the Constitution, and in that case all the leading authorities on the subject were cited, and many of them were used at length. To that opinion, and authorities cited, we call the attention of this court. As a contract, from the day of the passage of the act, it held out an *encouragement* to persons to take up these lands. It does not say from the day of entry at all, but it is general, and operates necessarily from the day of its passage. We must take the act as it is, and must not incorporate words not there originally, and, as far as we can learn, not intended to be there. When the legislature passed this law, exemption from taxation became at once one of the conditions of the acceptance of the grant. Until the legislature, by an act for that purpose, accepted the grant from Congress, it was of no avail—could not be used for the benefit of any one. When her legislature did accept it, the bounty was in a shape to be used, and was not before. And upon plain principles, whatever the legislature did in that behalf

related back to the grant, and the act granting, as well as the one accepting, formed in themselves, together, one act—an entirety. It required both to give vitality, if you please, to the project. Both acts stood then as material parts of the whole. 2*d Parsons on Contracts*, 509 *et seq.*, *and notes.*

It is true, the State may not have been under any obligations, legal or moral, to have exempted these lands; but voluntarily throwing this restriction around the grant, and making it a part of the grant, it is beyond her reach afterwards. No subsequent legislature can lay its hand on this grant, or any material part of it. It has already assumed the solemn forms of a contract, and it is protected from future modification. She, the State of Arkansas, is bound by this act so long as the grant is recognised to be in existence. 2*d Parsons's Contracts*, 512; *Benson vs. The Mayor, &c., of New York*, 10 *Barb.*, 223; *Warner vs. The People*, 2 *Denio*, 272; 10 *How. Sup. Ct. U. S.*, 511.

If, as we have contended, the two acts together made the grant complete, and they alone did this, the grant then became a contract, and any future changes of it were of no avail, but were perfect nullities. And we submit the old case of *Fletcher vs. Peck*, 6 *Cranch*, 87, and dozens of others, decided since by this court, bear us completely out in this position.

If the law repealing the exempting clause stands, it is apparent to us, the whole grant falls to the ground. This must be the necessary result, if our position be untrue. If an essential part of the grant be destroyed, it is a contradiction to say the grant still exists. This cannot be. The grant having been completed, law, as well as good sense, would always dictate that it should be upheld and carried out. The simple rule is, the contract should be supported, rather than defeated. 2*d Parsons*, 15, *and note X.* And another rule of law equally well settled is, that, as in ordinary contracts, modifications or changes must be made by both parties, or with their knowledge and consent. So it is as to grants of all kinds; the grantor must dispense with the condition of the grant before it is waived. This rule has been waived and acted on time and again. *See Ins. and Opns. Atty's Gen'l*, (*compiled by Hall,*) 2 *vol.*, 550, (Taney, Att'y Gen'l;) 5 *Ib.*, 574, (Crittenden, Att'y Gen'l.)

It is evident from the *levee act*, (*see Acts of Arks. of* 1856–'7, *p.* 58,) that its object was the attainment of the same end and by the same means—that is, by leveeing—as contemplated by the act of Congress granting these lands to the State of Arkansas. For this very object Congress had put in the hands of the State a fund, by which she was to build these necessary levees, and the State was bound so to apply the fund. Her obligation to do this formed a part of the contract between her and the United States, and the owners of property have the unquestionable right to have this con-

tract performed by her. The second section of the granting act points out the purpose for which the grant was made. No other can be substituted, and this must be followed to the letter. The authorities already cited by us sustain us on this point. By the enactment of this levee law, the State solemnly declared, that the laying out and building of these levees in Chicot county was *necessary*. If *necessary*, there is a way already provided—that is, under the terms of the grant, the State must apply the lands granted to her. The State cannot thus evade the obligation. By this act she has attempted to discharge her contract in a wholly different manner from that agreed upon. It amounts to this: she withholds the funds given her for a specific purpose, and to that extent she abrogates McGehee's right, as well as the right of all property-holders there, under the act of Congress to have those funds, or lands, applied to the building of levees; and besides this, imposes upon them additional burdens to complete the very end which Congress had in view in making the grant. This, it occurs to us, is directly in the teeth of the grant, and at war with the Constitution. Every solitary right the citizen, or property-holder, had under this grant is destroyed; and really the grant thus misused and diverted is no bounty, no benefit, but a downright oppression. Then, upon the principle before stated, that the grant (or contract) must, by fair and liberal interpretation, be upheld, and its ends and objects carried out, this special *levee act* which taxed the owners of lands to build levees must be held null.

What rights did McGehee acquire under his contracts made and entered into, and from the scrip issued to him on such contracts, prior to the repeal of the exemption clause? Under the law a levee contractor might take his pay in lands, drained and leveed, or in scrip worth so much, *each piece of scrip representing so many acres of land*, and this scrip was made assignable and could be located on any of the unlocated swamp lands. *Collection of Swamp Land Laws, p. 7, secs. 4 and 5. Again, pp. 18 and 19, sec. 27*, it is provided, "that when any contractor shall receive his account certified to, he shall present the same to the auditor, and the auditor shall issue a warrant on the treasurer, who shall pay the same out of any money in the treasury, arising from the sale of swamp and overflowed lands; *and if* there be no money in the treasury arising from this source, the treasurer shall issue swamp land scrip, to be holden in such denominations as may be desired, not less than twenty dollars, for the amount certified to, *which scrip shall be receivable in payment for swamp lands at public sale, or at private entry.*" The first of these laws was passed on the 6th day of January, 1851, and the second on the 12th day of January, 1853. For what purpose was this scrip issued, and in legal contemplation what was it? The law, in unmistakable language, stamped it with certain characters and properties—made it assignable, and made it

the representative of so much land. With its value on its face, its negotiability, &c., it was at last but land. While the law made it the representative of land, it at once pointed out its ultimate destination, or purposes—that is, location upon swamp land. It gave the holder a right to so much land, and until it was located it had no value, of itself; independent of the idea of locating it, it was worthless. It might go from A to B, and so on through a thousand hands, but the last holder of it never received his rights under it till it was converted into land. Until then, its offices were incomplete. No one can contend for a moment that any contractor took the scrip for itself, or for any inherent value in it, as so many dollars to him; but contractors took it to merge it ultimately in land, the only end and object contemplated by the law. We have seen that the law of this grant was a contract, and whenever a party received scrip for work done, as a contractor, he was undoubtedly a party to this contract, and entitled to all its benefits. Among other things, this contract said, (14 *sec. act of* 1851), if A will drain and levee 1,000 acres of land, so as to reclaim the same, he will be paid therefor, if he desires, in swamp land scrip, with which he may enter lands, and such lands shall not be taxed for a period of ten years, or until reclaimed. A does the work under this law, or this contract; how can his rights, or those of his assignee in the scrip, if there be one, be modified, restricted or changed in the least? The original holder has the right, then, and the instrument assigned, or *scrip transferred*, carries its original legal liabilities into as many hands as it may chance to fall. Such is the well settled rule as to all assignable paper. *Railey* vs. *Bacon*, 26 *Miss. Reps.*, 451; *Walker* vs. *Johnson and al.*, 13 *Ark's Reps.*, 522. It may issue and travel an extensive circuit, yet it comes back at last with its burdens, and certainly its advantages and privileges. In a legal, as well as a business point of view, we have seen plainly enough that the scrip was land; then, if the land could not be taxed before the 11th day of January, 1855, how can that be taxed after then, which was the legal result or consequence of scrip issued prior to that day? The mere statement of the proposition, we are persuaded, is a full and sufficient argument of it. By what authority can the legal characters attaching to this paper when issued, be changed? It might with equal propriety be said, that a holder of a promissory note, bearing ten per cent. interest upon its face, and allowed by law when it was executed, can be by a subsequent law deprived of the interest on the note, which was a part of the contract called for by settlement, as well as by the paper itself! This we all know cannot be done. *Reid* vs. *Renss. Glass Factory*, 3d *Cuven*, 393; 5 *ib.*, 587. This species of legislation, by which an attempt is made to abridge in any way the rights of a party to a contract already made and entered into, was fully expressed by this court in *Suy-*

dam vs. *Broadnax and al.*, 14 *Peters;* and to this we need add nothing.

This scrip issued to the levee contractor, carried along with it, by the very law which created it, the contract that its fruits or its results should not be taxed; just as much so as the note we have instanced bears interest, and entitles its holder to receive such interest. One case is as strong as the other. Any act or measure which enlarges, abridges, or in manner changes the intention of the parties, resulting from the stipulations in the contract, necessarily impairs it; any deviation from its terms, by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those expressed, however minute, or apparently immaterial in their effect upon it, impairs its obligation; 2*d Story's Com. on Cons.*, *p.* 236, *sec.* 1385, *notes* 2 *and* 3. Tested by this rule, the effort to tax swamp lands entered with this kind of scrip must fail. In this case it is the law that is the contract. The exemption, it is true, does not appear on the face of the scrip, nor does it appear either on the certificate of entry, and in both cases we are to fall back to the law for the exemption. It must be, beyond doubt, that when McGehee received his scrip, it was his idea, as also that of the State, that whatever land he should locate with this scrip should be exempt from taxation. Besides this, a familiar rule of law is, that parties are always presumed to contract upon, and with a view to, the law. And in inquiries of this kind, could there be any doubt as to the law governing the contract, it is all-important to ascertain what each party did rely on; 2*d Parsons' Cont.*, 6, 9. If this be true, the whole end and object, and the intention of the contract, are destroyed by taxing the land in question.

We think the point is decided in *Woodruff vs. Trapnall*, 10 *How.*, 190. The substance of that case is just this: In 1836, the legislature of Arkansas chartered a bank, the whole of the capital of which belonged to the State, and the president and directors of which were appointed by the General Assembly. The 28th section provided "that bills and notes of said institution shall be received in all payments of debts due to the State of Arkansas." In 1845, this 28th section was repealed. The court ruled that the notes of the bank in circulation at the time of the repeal were not affected by it; holding that, by attempting to discharge the contract by the payment of a smaller sum, or at a different time, or *in a different manner*, than the parties had agreed, impairs the obligation by substituting a contract which the parties never entered into, and to the performance of which they never consented—referring to 3 *Mason*, 88; 4 *Wheaton*, 122. In this case, the party could at first get land with his scrip, not taxable; but now it seems he can get land only that is taxable. Is not this a totally different con-

tract from the one made and in force when the scrip issued? Is not the manner of discharging it wholly changed from that contemplated at the time?

In *Curran vs. State of Arkansas et al.*, 15 *How.*, 304, the court said, that the bills of a bank being payable on demand, there was a contract with the holder to pay them; and laws which withdrew the assets of the bank *into a different channel*, impaired the obligation of this contract—the State had no right to withdraw those funds after the right of a creditor to them had accrued; holding, that this fund being charged with a trust in favor of Curran as an unpaid creditor, no after legislation could alter or change its character so as to affect his rights—referring to 1 *How.*, 311; 2 *ib.*, 608.

The holder of this kind of scrip was, in the eyes of the law, a creditor of the swamp land fund, and could compel the proper officers of the State to sell him swamp land therefor, previous to January 11, 1855, on which he was not to pay taxes. This scrip, in circulation previous to that day, is charged with certain equities, if you please, as were those bank bills in Curran's case. What right has the legislature to change or modify those equities in this, more than the other case? Before the 11th January, 1855, he can get lands not taxable, but after then he cannot; is this not a complete substitution of a new contract? See, too, *Winter vs. Jones*, 10 *Georgia*, 190; *Steen vs. Finley*, 25 *Miss.*, 555. It is no difference how much the change amounts to—the only question about it is, is there a change at all?

In none of the acts is the time in which the scrip is to be located limited. The holder of the scrip could wait and use his own option as to the time of locating his scrip. McGehee, as a holder of scrip, was not hurried by the law; and as such holder, prior to the 11th day of January, 1855, he was not entitled merely to the quantity of land represented by this scrip, but, as an encouragement, (*see sect.* 14, *sup.*,) the additional benefit of an exemption of that land from taxation for ten years from the date of entry, or until it was reclaimed—a benefit to him, as this record shows, amounting to nearly $5,000 yearly. But if he should hold his scrip, and fail to locate it—about which the law left him to his own judgment—until after the 11th of January, 1855, he must lose this additional benefit, which formed an essential part of his contract. The law under which McGehee contracted tolerated his waiting, and took from him some of his rights in case he did wait. Now how, in the name of law, can the subsequent act affect him, when, at its passage, he held in his hands the representative of the land itself—holding, as he did then, a right already accrued to him, to that which the law of his contract said might be located

at any time, and should be free from taxation? Such a thing is impossible.

These lands, then, cannot be taxed for state, county, general, special, or any other purposes. They are entirely free from all taxes for the time named in the 14*th sec.*, *sup.* *See* 19 *Ark's Reps.*, *sup.* As stated in the 4*th item* of the agreement in this cause, McGehee insists the *levee act* is unconstitutional; and for this position, we have assigned reasons for him, which, to our mind, clearly indicate that this act directly violates that section of the Constitution of the United States which prohibits any State from passing any law impairing the obligation of contracts; and we respectfully submit that, for the reasons given, this cause should be reversed.

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